IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2923 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT SMALL INDUSTRIES CORPORATION LTD.

Versus

RAMESHBHAI JAGDISHBHAI ZAPADIA

Appearance:

1. Special Civil Application No. 2923 of 2003

MR PV HATHI for Petitioner

MRS DT SHAH with MR NILESH M SHAH for Respondent

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 12/07/2004

ORAL JUDGEMENT

1.1. The petitioner Gujarat Small Industries Corporation Ltd. [hereinafter referred to as "the Corporation"] has challenged the judgment and award of

the Labour Court, Ahmedabad passed in Reference [L.C.A.] No. 2137 of 1985 dated 20th April, 2002, whereby, the Labour Court has reinstated the workman with continuity of service and awarded 60% backwages.

2.0. The facts of the case as they emerge from the record of the petition are as under ;-

2.1. The respondent - workman was engaged by the Corporation on 2nd December, 1991 as daily wager on payment of Rs.35=00 per day. The respondent workman was called for work as and when the Corporation was organizing the exhibition sale. According to the respondent - workman, he was orally relieved from the service by the Corporation on 11th February, 1995 after completion of the work. Therefore, the respondent workman raised a dispute, which ultimately came to be referred to the Labour Court for adjudication by the Assistant Labour Commissioner, vide order dated 24th July, 1995.

2.2. Before the Labour Court, the respondent - workman filed statement of claim, which is produced at annexure-A to the petition. In the said statement of claim, it was averred by the respondent - workman, that he was working as daily wager with the Corporation since 2nd December, 1991 and he was paid Rs.35=00 per day and the payment was made at the end of the month.

2.3. He has also stated that he had worked for 240 days continuously with the Corporation. In paragraph 3, he has specifically averred that no procedure has been followed by the Corporation nor any retrenchment compensation or salary in lieu of the notice was paid to him and no legal proceedings are initiated against him. It was also averred in paragraph 4 that as per the seniority list no procedure has been followed by the Corporation and juniors were retained by the Corporation.

2.4. It is further averred that his juniors were continued and even new employees were taken in the service by the Corporation. Thus, the Corporation has violated the provisions of Section 25-F, G and H of the Industrial Disputes Act [hereinafter referred to as "the Act"]. He ultimately prayed that the decision of the Corporation dated 11th February, 1995, orally relieving him from the service be declared as illegal and the petitioner be directed to reinstate him on his original post with continuity of service and backwages and other incidental benefits.

2.5. Mrs. Shah, learned advocate for the respondent, has relied upon annexure-D, whereby the witness of the Corporation has in cross-examination admitted that the respondent-workman was also engaged in the office work.

3.1. In the defence statement, the Corporation has specifically denied the case of the respondent - workman and has contended that he has not worked for 240 days and he was called for service as and when the exhibition sale was conducted by the Corporation. The said defence statement is at annexure-B to the petition. The examination of the respondent - Workman is on the record and in the cross-examination, it was proved that he was paid for all the days for which he had worked and he was given payslip for the work done by him and he has also admitted that when exhibition was conducted by the Corporation, he was working as sweeper in the office of the Corporation.

4.0. After considering the evidence and submissions of both the sides, the Labour Court has come to the conclusion that requirement of 240 days mentioned in Section 25-B (2) would not apply at the time of counting continuous service. The Labour Court has relied upon the decision rendered in the case of Moti Ceramic Industries v. Jivuben reported in 2000 (2) G.L.R. p.1558 [2002 (2) LLJ p.735]. In the said decision the word "continuous service" has been interpreted by this Court and it has been held that if the employer failed to provide work during the particular period that would be cessation of the work not due to any fault of the workman and the case would be governed by Section 25-B (1) of the Act and in such case requirement of 240 days is not required. Mere fact that the workman had not worked for 240 days during some years in his long service, would not make Section 25-F inapplicable. The Labour Court has relied on the said judgment and has held that it was continuous service and the Corporation has not given work to the respondent - workman, though there was work available. It is not the case of workman that though work was available he was not allowed to work. Therefore, this judgment will not apply in the present case.

4.1. Mr. P.V. Hathi learned advocate for the petitioner has relied upon the judgment of the Apex Court in the case of Range Forest Officer v. S.T. Hadimani reported in (2002) 3 S.C.C. p.25 [J.T 2002 (2) S.C. p.238] wherein, the Apex Court has held that the burden is on the employee to prove that he has worked for 240 days continuous in the preceding year. In the present case the documents and the evidence which were produced

before the Labour Court admittedly prove that the respondent workman had worked for 132 days in the last preceding year and there is no averment or evidence on record to make the law laid down by this Court in case of Moti Ceramic Industries v. Jivuben (Supra) applicable to the present case. In that view of the matter the Labour Court has committed error in arriving at a conclusion that 240 days is not required in the present case. Provisions of Section 25-B (2) otherwise, will apply even in that case requirement of 240 days is there. Therefore, the conclusion reached by the Labour Court is contrary to the provisions of law.

4.2. Mr. Hathi has contended that assuming that everything is against the Corporation, then also the Labour Court ought not to have reinstated the respondent - workman with continuity of service, at the most the Labour Court could have directed to reinstate him as daily wager on the list of daily wager. Moreover, the Labour Court ought not to have awarded 60% backwages and ought to have directed to follow the provisions of Section 25-G and H of the Act. In my opinion, the contention raised by Mr. Hathi is required to be accepted, in view of the fact that as per the say of the respondent - workman, he was employed as daily wager and was paid Rs.35=00 per day at the end of every month, then he ought to have been reinstated only as a daily wager and at the most the Corporation could have been directed to follow the provisions of Section 25-G and H.

4.3. The other contention which was raised by Mr. Hathi is that regular employees were already relieved because of the restriction of the activity by the Corporation. Therefore, if the regular employees are relieved, then there is no question of reinstatement of daily wager. He has further contended that 95% of the workmen are relieved by the Corporation. Thus, the Labour Court could not have granted reinstatement in view of the fact that after 1997, the Corporation has not employed or reinstated or appointed any other person. This point was not raised before the Labour Court, but since the Corporation has restricted their activity then no fruitful purpose would be served by issuing such direction.

5.1. The matter was argued on 8th July, 2004. On that day, Mrs. D.T. Shah learned advocate for the respondent - workman was not in a position to show the relevant judgments and, therefore, she was granted time to produce the judgments. Therefore, the matter was kept only for the purpose of producing those judgments. Today, Mrs.

Shah has argued the matter on merits and also produced synopsis and unreported judgments of this Court.

5.2. The first decision referred by Mrs. Shah is in the case of Surendranagar District Panchayat v. Dahyabhai Amarsinh delivered in Letter Patent Appeal No. 309 of 2002, wherein, the Division Bench has dismissed the Appeal filed by the District Panchayat and confirmed the order of the learned Single Judge. In the present case, in my opinion, the workman has not proved that he had worked for 240 days. The employer has also produced sufficient material to show that he has not worked for 240 days. Therefore, the ratio laid down by the Division Bench in the said decision, while dismissing the Appeal will not help the respondent - workman.

5.3. The other unreported judgment relied on by Mrs. Shah was rendered in Special Civil Application No.4657 of 2001 wherein, the learned Single Judge of this Court has considered and directed the State of Gujarat to comply with the provisions of Section 25-G and H. The ratio laid down by the learned Single Judge in the said case is also followed in this case.

5.4. Mrs. Shah has further relied upon the decision of this Court in the case of Surendrangar District Panchayat v. Mohbatkhan Rehmankhan delivered in Special Civil Application No. 482 of 1995, wherein, the learned Single Judge of this Court has held that the petitioner failed to establish that the respondent served only for 75 days whereas, the respondent succeeded in establishing that he worked for continuous period of one year. Therefore, on facts this Court has not considered the case of the Panchayat and has not disturbed the finding of the Labour Court. However, in the present case, the respondent workman was daily wager and he has not worked for 240 days continuously and even the workman himself has admitted that he was paid for every day for which he has worked.

5.5. Another decision which was relied on by Mrs. Shah is in the case of Surendranagar District Panchayat v. Jethabhai Pitambarbhai delivered in Letters Patent Appeal No. 1075 of 2002 wherein, this Court has observed that it is not open for this Court to go behind the finding of the Labour Court. In the present case, this Court is not inclined to disturb the finding of the Labour Court.

5.6. Mrs. Shah has also placed reliance on the decision of the Apex Court rendered in the case of Indian

Overseas Bank v. I.O.B. Staff Canteen Workers' Union reported in A.I.R. 2000 S.C. p.1508, wherein the Apex Court has held that it is not open for the High Court to interfere with the judgment and award of the Labour Court on the ground that the findings are based on insufficient material and that other view is possible. Thus, she has supported the judgment and award of the Labour Court. According to her the direction given by the Labour Court was just and proper and no interference was required to be made by this Court. As stated in para 5.5. I have not disturbed the finding of the Labour Court.

5.7. Having carefully considered the record and also the submissions of the both the learned counsel, it appears that there is nothing on record to establish the claim which the workman has put in the statement of claim, more particularly mentioned in paragraph 3 and 4. The above decisions are based on the particular facts and circumstances of the case. Learned counsel for the respondent - workman is unable to show that the case of the respondent - workman is similar to those cases. In the present case, the respondent - workman has not established that he has worked for 240 days in the preceding year.

6.1. In view of what has been stated hereinabove, the judgment and award of the Labour Court is required to be quashed and set aside. Accordingly, the petition is allowed. The judgment and award of the Labour Court dated 20th April, 2002 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

6.2. However, looking to the facts of the case and especially the services rendered by the respondent - workman with the Corporation, in the interest of justice, it is directed that whatever activity the petitioner is carrying on, as and when they require services of any sweeper, they will follow the procedure of provisions of Section 25-G and H of the Act and will engage the respondent - workman as daily wager.

[K.S. JHAVERI, J.]

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